



Town of Abington

500 GLINIEWICZ WAY
ABINGTON, MA 02351

Board of Selectmen Meeting

July 24, 2014

6:30 p.m.

Cotter Room

Members present: Ken Coyle, Andy Burbine, Tom Dion, Maureen Jansen

Also present: Attorney Gregg Corbo, Kopelman & Paige

- Pledge of Allegiance

Action/Discussion items:

1. To discuss pending Starwood legislation, and consider possible terms of a memorandum of understanding with Starwood.

Attorney Gregg Corbo reviewed the pending Starwood legislation (attached) with the Board. After much discussion amendments were agreed upon with the following motion:

M/Dion to have Attorney Corbo forward to our legislators the following amendments to the special legislation:

- That the Board of 9 directors that currently consists of one member appointed by the Board of Selectmen of the Town of Abington be increased. There are currently two members appointed by the Board of Selectmen of the Town of Rockland, or if not increased that the Abington member shall be permitted to speak at least one time on any matter prior to it being put to a final vote.
- That regarding the commercial minimum, the residential maximum, and the senior housing minimum, the following be added: provided, however, that a portion of the commercial development may be sited within the Abington portion of the site if Abington approves a major zoning change in accordance with this section.
- That regarding zoning revisions the following be added: Prior to submittal of any major zoning revision to the Town Council in Weymouth or the Town meetings in Abington or Rockland, the authority shall publish a notice of public hearing in a newspaper and hold at least one public hearing in the NAS South Weymouth Redevelopment Area or in any one of the Towns at which the public shall be afforded the opportunity to comment on the proposed revision.

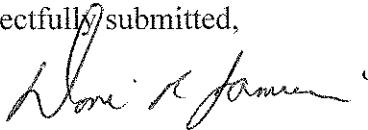
- That regarding Alcoholic beverage licenses the Town of Abington be authorized to issue a maximum of two alcoholic beverage licenses.
- That regarding police and fire protection that the Towns may enter into one or more mutual aid agreements for the sharing of resources.

S/Jansen
Voted 4-0

M/Dion to adjourn
S/Burbine
Voted 4-0

Meeting adjourned: 7:50 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dori R. Jamieson", written in a cursive style.

Dori R. Jamieson
Assistant Town Manager

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this "Agreement"), dated July __, 2014, is by and between LNR South Shore, LLC, a Delaware limited liability company having a principal place of business at 26 Memorial Grove Avenue, South Weymouth, MA 02190 ("LNR" or "Master Developer"), and the Town of Abington, Massachusetts, a body corporate and politic, with an address of 500 Gliniewicz Way, Abington Massachusetts 02351, acting by and through its Board of Selectmen ("Abington") (collectively, the "Parties").

RECITALS

WHEREAS, LNR is the master developer of the former South Weymouth Naval Air Station ("NAS South Weymouth") pursuant to that certain Disposition and Development Agreement entered into between it and the South Shore Tri-Town Development Corporation (the "Corporation") as of May 5, 2004 and as most recently amended by the Tenth Amendment thereto, dated December 28, 2010, and in that capacity is responsible for the master-planned redevelopment of NAS South Weymouth (the "Project");

WHEREAS, the Corporation is a body corporate and politic originally created pursuant to Chapter 301 of the Acts of 1998, which was amended and restated in Section 37 of Chapter 303 of the acts of 2008 (the "Existing Enabling Act");

WHEREAS, of the 2,855 units of residential housing contemplated to be constructed as part of the Project, only approximately 326 have been constructed to date, and of the upwards of 2 million gross square feet of commercial space contemplated to be constructed as part of the Project, only approximately 15,000 square feet have been constructed to date;

WHEREAS, one of the impediments to the more successful and rapid development of the Project has been an absence of adequate water supply and wastewater treatment capacity to serve the contemplated residential and commercial program;

WHEREAS, the Parties agree that Master Developer's ability to continue to develop the Project, and the ability of Abington and the region generally to realize the economic and other benefits of the redevelopment process, require that the Existing Enabling Act be replaced with new legislation (the "New Act");

WHEREAS, LNR and Abington agree that it would be desirable for the New Act to be enacted into law in substantially the form attached to this Agreement as Exhibit A, which form would, among other things, conditionally obligate Master Developer to assume primary responsibility for procuring and financing the water supply and wastewater treatment capacity required for the Project;

WHEREAS, the New Act would also, among other things, eliminate existing requirements with respect to the phased development of the commercial program at the Project, including elimination of a requirement for the construction of a golf course and other recreational facilities in the Abington portion of the Project, and replace those requirements with a system of incentives for the development of at least the Commercial Minimum (as defined in the New Act) when market conditions are favorable;

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WHEREAS, the market-responsive, incentive-based approach to developing the commercial components of the Project may, absent this Agreement, have the effect of delaying to Abington certain of the host community fee payments ("Host Community Fees") that it might have received over time pursuant to that certain Memorandum of Agreement dated October 1, 2007 and that First Amendment to Memorandum of Agreement dated September 30, 2010, collectively the Abington Host Community Agreement (the "AHC Agreement");

WHEREAS, the New Act imposes additional obligations on Abington with respect to land use, permitting and the provision of emergency services, which obligations will have a negative impact on Abington's ability to provide such services within its borders and which will result increased costs to Abington and its residents; -and

WHEREAS, Abington has agreed to support the passage of the New Act provided that it receives assurances that doing so will not deprive it of an opportunity, if conditions allow, for Abington, by and through the Abington Rockland Joint Water Works, to provide water and wastewater services to the Abington portion of the Project, it will not deprive the Town of Host Community Fees previously negotiated, and further that the Town's interests continue to be heard and responded to by the Master Developer to bring to fruition the regional vision of the NAS South Weymouth negotiated by the Towns of Rockland and Abington and the City of Weymouth-

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually covenant and agree as follows:

1. Effective Date. The obligations of the Parties under this Agreement shall take effect upon the date on which the New Act becomes fully effective (the "Effective Date").
2. Reporting. Master Developer shall, upon the invitation of the Board of Selectmen, attend one meeting of the Board of Selectmen each fiscal quarter for the purpose of reporting on the status of the Project.
3. Right of Offer for Water and Sewer Services to Abington Portion.
 - a. Within twelve months (12) months of the Effective Date, Master Developer agrees to submit to Abington a request for Abington to submit a proposal for the provision, by Abington, by and through the Abington-Rockland Joint Waterworks, of (i) ~~potable water sufficient, in Master Developer's reasonable estimate, to service the Abington Portion of the Project and~~ (ii) ~~sanitary-sewer collection, conveyance and treatment capacity sufficient, in Master Developer's estimate, to service the Abington Portion of the Project~~ (such request, the "Service RFP"). The Service RFP shall contain reasonable detail about the volume, location and timing of water and sewer services requested, so as to enable Abington to prepare a detailed response.

- b. Within ninety (90) days of receiving the Service RFP, ~~Abington shall~~the Abington-Rockland Joint Waterworks may submit to Master Developer a proposal for the provision of the water and sewer services described in the Service RFP (the "~~Abington Service Proposal~~"). ~~The Abington Service Proposal shall contain evidence, reasonably satisfactory to Master Developer, that the Abington-Rockland Joint Waterworks has obtained or may expeditiously obtain all permits and approvals necessary for Abington to provide the services identified in the proposal; provided, however, that if any authorization for the provision of such services is required from the Abington town meeting, such authorization shall be obtained prior to the submittal of the Abington Service Proposal. If the Abington-Rockland Joint Waterworks fails to submit the Abington Service Proposal by the deadline established in this Section 3.b (or fails to submit a proposal that is reasonably responsive to the Service RFP in Master Developer's judgment), then the Abington-Rockland Joint Waterworks shall be deemed to have waived its right to offer water and sewer services to the Abington Portion of the Project and Master Developer shall be under no further obligation to afford Abington and/or the Abington-Rockland Joint Waterworks any opportunity to provide such services.~~
- c. Master Developer shall have right, in its reasonable discretion, to either accept or reject the ~~Abington Service Proposal~~, in whole or in part. Such decision shall be communicated in writing to the Abington-Rockland Joint Waterworks within ninety (90) days of Master Developer's receipt of the ~~Abington Service Proposal~~ (the "Service Response"). It shall not be unreasonable for Master Developer to reject the ~~Abington Service Proposal~~ if, among other things, Master Developer has identified alternative means of providing water ~~or sewer services~~ to the Abington Portion of the Project that, in Master Developer's reasonable estimation, will prove more timely, economical or reliable than the services that Abington proposes to provide. Master Developer's reasons for rejecting any portion of the ~~Abington Service Proposal~~ shall be explained in reasonable detail in the Service Response.
- d. If, in the Service Response, Master Developer accepts the ~~Abington Service Proposal~~ in its entirety, the Parties shall thereafter work expeditiously and in good faith to negotiate and enter definitive water and sewer service contracts and any ancillary agreements required to implement the arrangement. If Master Developer accepts only a portion of the ~~Abington Service Proposal~~ (e.g., only the water supply portion), then the Abington-Rockland Joint Waterworks may elect to provide the accepted services (in which case the Parties shall proceed expeditiously and in good faith to negotiate and enter required agreements), or to not provide such services (in which case Master Developer shall be under no further obligation to afford Abington and/or the Abington-Rockland Joint Waterworks the opportunity to provide such services).

4. Payment or Land Transfer in Lieu of Host Community Fees. Except as otherwise provided herein, Master Developer shall continue to be obligated to pay Host Community Fees in accordance with the AHC Agreement, such fees to reach and be capped at \$1,975,000 for

development of commercial and residential space in accordance with the AHC Agreement. Master Developer hereby agrees that if, by the fifteenth (15th) anniversary of this Agreement (the "HCF Settlement Date"), less than \$1,975,000 in Host Community Fees have been paid to Abington pursuant to the AHC Agreement, then Master Developer, at its sole discretion, shall either (i) make a payment to Abington equal to the difference between \$1,975,000 and the amount of Host Community Fees that have been paid as of the HCF Settlement Date, or (ii) convey to Abington a fee simple interest in a parcel of contiguous, developable land area with an equivalent fair market value at the time of transfer as determined by an appraiser retained by Abington located within the Abington Portion of the Project. Master Developer's obligation to pay the Host Community Fee pursuant to the AHC Agreement shall be deemed fully satisfied upon Master Developer's making of such payment or conveyance, regardless of whether Master Developer proceeds to develop additional commercial and/or residential space as part of the Project following the HCF Settlement Date.

5. Mitigation of Impacts. In addition to all fees payable pursuant to the AHC Agreement, Master Developer will pay Abington the amount of One Million Dollars (\$1,000,000) to compensate Abington for costs imposed upon it under the New Act, including but not limited to emergency services personnel and equipment costs, both use of such equipment and personnel, and the loss of such equipment and personnel in Abington, thereby making available existing HCF and tax revenues available for other development impacts, including public works costs, lost revenues associated with those portions of the project that have been omitted from the overall development plan including the penalty for failure to build the golf course, and related expenses including services in connection with billing and collecting taxes attributable to the development Project, payable in equal installments payable beginning September 15, 2014, and thereafter on July 1 of each calendar year for nine years.

4.6. In addition to the Mitigation Payment, the Master Developer shall provide at the Master Developer's sole cost and expense, a breakaway gate off Spruce Street in the Town of Abington for the purpose of ensuring that Abington Police, Fire and other emergency responders have unimpeded access to the Abington Portion of the Project.

5.7. Amenity Plan. Abington shall be entitled to utilize public recreational areas and shall pay discounted user fees sufficient to cover operations, capital reserve and maintenance costs for such amenities in proportion to Abington's use thereof.

8. Land for Recreational Facility. Master Developer will provide certain land to Abington, on which Abington may construct a recreational facility (i.e. athletic fields, baseball diamonds) (the "Land"). The Land shall be located in Abington, in the area that is zoned, as of the date of this Agreement, for Open Space (Golf Course), and evidence acceptable to Abington shall be provided to Abington no later than seven days prior to the time of transfer that such land has been cleaned of environmental contaminants, if any, all at Master Developer's sole cost. The Land shall not exceed 4-5 acres in size and its location shall be reasonably acceptable to Abington. The design and construction of the facility shall be acceptable to LNR in its sole discretion.

6.9. Legal Fees. Master Developer shall reimburse Abington for all costs, expenses and attorneys' fees incurred by Abington for the provision of legal services rendered in connection with the New Act and this Agreement; provided however, that the Master Developer shall not be obligated to reimburse Abington for costs, expenses and attorneys' fees incurred in excess of twenty-Five Thousand Dollars (\$25,000).

10. Permitting Fees. Master Developer shall reimburse Abington for the reasonable costs incurred by Abington with respect to any permitting or rezoning effort undertaken by Master Developer with respect to development on the portion of the Project located in Abington, to include but not be limited to permitting and zoning changes required to site and operate a wastewater treatment facility. ~~provided such costs are normally and customarily charged to developers seeking permits or changes in zoning in Abington.~~

11. Representations and Warranties of Abington. Abington hereby represents and warrants to Master Developer that the person signing this Agreement on behalf of Abington has all requisite power and authority under applicable law to execute and deliver this Agreement, and that this Agreement constitutes a valid, binding, and enforceable agreement of the Town of Abington.

12. Representations and Warranties of LNR. LNR hereby represents and warrants to Abington that the person signing this Agreement on behalf of LNR has all requisite power and authority under applicable law to execute and deliver this Agreement, and that this Agreement constitutes a valid, binding, and enforceable agreement of LNR.

13. Notices. Notices given or other documents delivered pursuant to this Agreement shall be sent by hand or recognized overnight carrier to the Parties at their addresses indicated above.

14. Interpretation; Governing Law. Nothing in this Agreement shall be interpreted as derogating from or modifying the Parties' respective rights and obligations pursuant to the New Act. This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

THE TOWN OF ABINGTON, MASSACHUSETTS

By: _____
Name:
Its:

LNR SOUTH SHORE LLC

By: LNR Development Properties, LLC,
a Delaware limited liability company,
its sole member

By: _____
Name:
Its: